

THE AMENDMENTS VALID.

MR. CHARLES O'CONNOR SUSTAINS THEIR LEGALITY.

"WHENEVER THEY SEE FIT, THE PEOPLE OF A STATE CAN ALTER THEIR WRITTEN CONSTITUTION"—THE ALLEGED INFORMALITIES UNIMPORTANT AND NOT TO BE WEIGHED AGAINST THE POPULAR WILL—BOTH OF THE OBJECTIONS URGED AGAINST THE VALIDITY OF THE AMENDMENTS WITHOUT FORCE—THE SUPREMACY OF THE PEOPLE.

Some of the Constitutional Amendments, especially the one relating to the sale of the canals, and that in which special legislation was checked, after being passed by the first Legislature to which they were submitted, underwent some changes in the second. Prominent politicians thereupon raised the point that, in the form in which they were submitted to the people, they had not previously received the approval of two successive Legislatures which the Constitution requires, and in spite of the popular ratification were therefore invalid. The magnitude of the interests involved, and the great desirability of the reform which these amendments attain, made an authoritative legal and constitutional examination of this question of the utmost importance. THE TRIBUNE sought to obtain this from one of the highest authorities in the State or country, and has the pleasure of submitting herewith the carefully prepared and elaborate opinion of Mr. Charles O'Connor.

MR. O'CONNOR'S OPINION.

I. The Constitution of 1846 (Article 13) provides a method by which from time to time, as occasion shall seem to require, it may be amended. Concurrent resolutions of the legislative bodies in two different years, and a final approval by the people, constitute the process. The instrument does not prohibit the employment of different means unless such a negative can be implied from its having thus made provision for a method which is undoubtedly convenient and suitable. I think it is not maintainable by any fair reasoning that a State Constitution which so provides a means for its own amendment cannot be altered or varied from in any other manner. Certainly such a negative implication is not admissible in New York, for its present State Government cannot be altered, and exists on precisely an opposite basis. Its Constitution was formed and adopted in 1846 by means entirely different from those prescribed for its own amendment by the then pre-existing fundamental law. Were there not—as there is in fact—other ample precedents and controlling authorities to the same effect, this circumstance alone would compel an acknowledgment here that there is no such implied prohibition.

The first inquiry, however, should be whether the amendments recently approved by the people have been adopted in the method prescribed by the 13th Article of 1846.

Among a series of amendments to the 3d Article, the Senate and Assembly of 1872 proposed a substitute for the existing fourth section of that Article. This substitute was rejected in the year 1874, and this difference between the action of the two Legislatures has given rise to a doubt whether the other amendments in the same series were submitted to the people in the mode prescribed.

The original fourth section, which, of course, remains in force as a part of the Constitution, is as follows:

"SECTION 4. An enumeration of the inhabitants of the State shall be taken under the direction of the Legislature in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the Legislature, at the first session after the return of every enumeration, that each Senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens and persons of color not taxed, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a Senate district, except such county shall be equitably entitled to two or more Senators."

The proposed substitute for this (old) fourth section, which was thus dissented from in 1874, and was consequently lost, was identical in effect with that provision of the old fourth section which is above italicized. The rejection of the proposed substitute produces no other consequence than to leave the Legislature in possession of a power to alter or readjust the Senate Districts upon the return of each decennial census. The proposed substitute, if adopted, would have abolished this feature of the fundamental law, thereby rendering the Senate districts unalterable by any mere legislative act.

The proposed provision concerning a census cannot be regarded as of itself constituting an intended amendment or alteration. That matter was to stand on precisely the same footing, whether the old fourth section should remain in force, or the proposed new one should be adopted. The rest of the old fourth section, i. e., the part above set forth and not italicized, was a distinct and isolated law, having no necessary connection with anything else in the Constitution as it stood before the other contemplated amendments, or as it would stand after all or any of them should be adopted. The new provision relative to the census was framed merely to vary the language so as to adapt things to the intellectual attainment at exclusion. The precise original meaning remained.

Whether the other amendments to the 3d Article in this series were prepared for popular acceptance in conformity with the directions given in the 13th Article, evidently depends upon the power of the Houses under that Article to disapprove some distinct provisions in a series of proposed amendments referred to them by a previous Senate and Assembly, and yet to approve the rest and submit them to the people. I see nothing in the 13th Article to justify a doubt of their power. The 13th Article does not indicate an intent that all the amendments which may be agreed to at the first deliberative session shall be dealt with as an unit in the second and adopted or rejected as an entirety. If this were so, all the recent amendments must have been submitted to the people. For this construction no one will contend. But it may be suggested that each set of amendments incorporated at the first session in a single concurrent resolution of approval must, at the second session be taken up and dealt with as a whole. This would be attaching undue importance to a mere mechanical arrangement of subjects. When several propositions are in their nature, contemplated effect and necessary operation separable, their physical union in the record or presentation of them is a merely clerical affair and entitled to no consideration. Allowing the circumstance of a physical tacking together thus to control the ulterior proceedings on distinct propositions, would give the first deliberative assemblies more power than the second, which cannot be the intent, for while the former may act from their own spontaneous will in this respect were allowable, one would naturally think the power of the second Legislature should be greater than that of the first. The requirements of a reference to the second Legislature and a submission to the people are, in this respect, similarly framed, and neither contemplated, nor all the amendments referred to in the same resolution, should be treated as constituting a single indivisible proposition. One feature of the 13th Article seems sufficient of itself conclusively to repel this objection. It provides that the proposed amendment or amendments shall be submitted to the people "in such manner" as the second Legislature shall prescribe. Surely it will not be denied that when submitting amendments to the people for their ratification or rejection, the second Legislature may, or even arrange various subjects in such classes as in its

judgment, may seem most appropriate or convenient. Such is the universal practice.

It must be admitted that if the other amendments of this series so intended there will remain in force an instrument an incidental provision referring to "persons of color not taxed" which will not be in harmony with its general tenor; nor is it to be denied that, in practice, this very provision may have some actual operation. But that incongruity is of the most trifling nature in itself, and it would exist by force of the XVIII Amendment to the Federal Constitution even if these State amendments were all rejected. Besides, it can never be of any substantial consequence.

It is understood that the proposed amendments to the 7th Article were actually adopted in precisely the same terms by the concurrent resolutions of 1873 and 1874; but a question is made concerning the manner in which they were published.

One of these amendments was a new sixth section. It contained a list of certain State canals with various directions concerning them. This section was originally introduced in 1873, and on their being sent to the Assembly, the latter inserted in the list "the Black River Canal"; but after considerable intercourse between the Houses concerning this addition the Assembly receded from its proposal. Through some accident or inadvertence, this receded proposal of the Assembly found its way into the copy of the amendments which was furnished for publication in the session laws of 1873 and by the State printer of that year, and the amendments were printed accordingly. The error in the printed statute-book is immaterial; more important may attach to the error in the publication by the State printer. The Constitution of 1846, Section 13, enjoining that any amendments agreed to by a Senate and Assembly, as those in question were, "shall be published for three months previous to the next general election of Senators." And it is surmised that this accidental interpolation in the State paper may be regarded as having prevented the electors of 1873 from receiving such full and perfect notice of the projected measures as was contemplated by the fundamental law. Some persons have suggested that this insertion in the published notice may involve an entire defeat of the reforms projected by this series. There is no just ground for this apprehension. The additional words do not impair the notice. The object was to awaken among the people adequate attention to the proposed changes prior to their choice of representatives; and this was done. In respect to each canal specified in the list, the proposed regulations presented a distinct and separate question, which on the ultimate submission to the people for ratification might well have been separately approved or rejected. This shows that the item erroneously superadded could not have misled. If something had been omitted, as for instance one of the canals actually named by the legislative bodies, a different view might, perhaps, be taken; but the addition did not leave the elector unwarned, and consequently it worked no mischief. It is a familiar dictate of common sense fully recognized in the strictest practical codes, that anything which gives all requisite information, and involves no injurious misleading for administrative, is sufficient as notice. In no department of legal proceedings is technical nicety less regarded; on a question of notice, the substance is alone looked to. Another consideration lends strength to this view, and is of itself an additional and conclusive answer to the objection. A premissal observance of forms can never be insisted on unless they are prescribed in the law governing the case; and by turning to the Constitution we find the requisite imposed is simply that the amendments "be published for three months." The Legislature is not required to make any rule or law as to the publication or to take any action respecting it, nor is the duty of publishing enjoined upon any particular officer. No form or method or place or instrument of publication is specified. That an exact copy shall be given is not stated; indeed, giving out such a copy without annexing to it some further statement would hardly convey such information as would conform to any supposable intent, yet certainly no particular accompanying statement is prescribed. The word "for" is the only pointed thing in the injunction, and that merely implies that in case the mode of publication resorted to should be in its nature continuous, there should not be a discontinuance during the prescribed term—that is to say, if the print selected should be a daily, weekly or monthly issue, that the notices should not be omitted at any time during the term. In short, the whole provision is in the most general terms, and it cannot be regarded as requiring more than that there shall be a full and fair notification to the people of the measure in progress continuously throughout the methods in common use for similar purposes at the time, and that the method should be apt to the end in view and reasonably adequate to its accomplishment. I think this was done. Such an evidently immaterial and wholly inconsequential interpolation in the published notice, accidentally made by an official copyist or by the printer, should not be permitted to annul a public act repeatedly sanctioned by the people after long intervals of deliberation, twice through their representatives and finally by themselves individually and directly in their sovereign capacity. Had that particular canal been named in the amendment as adopted in 1873, it is evident, for reasons before stated, that the Legislature of 1874 might have stricken it out of the list without prejudice to the rest of the section.

I think there is no force in either objection, and upon the whole, am persuaded that all the amendments which the people have ratified were duly submitted to them in conformity with the 13th Article and have thereby become parts of the Constitution.

II. The action of the legislative bodies in 1873, and the publication made or notice given by the State Printer are unimportant and immaterial, unless it is to be assumed, in opposition to what I have stated at the outset, that the Constitution of 1846 cannot be amended or varied from except in the method provided by itself. Let us see whether the law be the law. The supreme power at every point of time resides in that portion of the people who by the then existing fundamental law possess the elective franchise. They constitute in politico-legal terminology the People: they are the State. Written constitutions differ essentially from ordinary laws and temporary laws in this only, i. e., that the latter are enacted by a representative agency of limited powers, while the former emanate from the People themselves in the exercise of their original and personal right as individual members of the political and social unit, the State. While, in exercising this right, they are responsible to their own consciences only, and are subject to no limitation or restraint from any human institution, or from anything except within the notion of law save and except to no consideration. Allowing the circumstance of a physical tacking together thus to control the ulterior proceedings on distinct propositions, would give the first deliberative assemblies more power than the second, which cannot be the intent, for while the former may act from their own spontaneous will in this respect were allowable, one would naturally think the power of the second Legislature should be greater than that of the first. The requirements of a reference to the second Legislature and a submission to the people are, in this respect, similarly framed, and neither contemplated, nor all the amendments referred to in the same resolution, should be treated as constituting a single indivisible proposition. One feature of the 13th Article seems sufficient of itself conclusively to repel this objection. It provides that the proposed amendment or amendments shall be submitted to the people "in such manner" as the second Legislature shall prescribe. Surely it will not be denied that when submitting amendments to the people for their ratification or rejection, the second Legislature may, or even arrange various subjects in such classes as in its

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prove it. And this result may be reached without the observance of any other form or ceremony whatever. A written Constitution cannot effectually forbid the subversion of its provisions, or in any way direct the people of power to modify their institutions in a peaceful and legal way.

On principle this proposition cannot reasonably be questioned in any of the States. In ours, as before stated, controlling precedent has established it. Consensus of this and many similar precedents, an able writer has intimated that a positive prohibition could not be overcome except through the instrumentality of a Convention called by authority of the Legislature. It may be admitted that a Convention to prepare and propose the alterations is the most expedient course; but there is no legitimate basis for the assertion that such a preliminary step is indispensable.

A Legislature created by and holding its powers under a fundamental law thus nominally invested by its own terms with eternal life and with infallibility, would indeed contravene a prescribed duty were it to propose to the electors a new Constitution or even a partial amendment of that in existence. But it would not be less a transgressor against the expressed will of its over-confident creator were it to initiate steps leading to that same end through a Convention, or through any other device whatever. It is obvious that in any action of this sort such a Legislature would proceed merely as a volunteer organizer; and, except through an inherent function, inseparable from its very existence, enabling it to perform that office for the people whenever needed, it could not, in opposition to the existing written Constitution, give any legal or operative sanction to the contemplated changes. It must be seen that all reasoning which admits a legal capacity to overturn by regular and peaceful proceedings such a constitution, supposes two principles anterior and superior to it, that is to say, first, that the people possess inalienably the supreme power, and secondly, that they may exercise it in a regular and orderly way. The latter concession is indispensable, for the only alternative is naturalizing in our better system the alien offspring of monarchical misrule—fervid and disorderly revolutions. Certainly this second proposition of paramount American law is not emboldened, nor could it be in any prescribed form; it neither recognizes a convention nor any other particular methods, and hence it is quite clear that a convention is not indispensable. Still, as it is a legal principle there must be a peaceful way of giving it effect. There is such, for no government can exist without official agents; and if that one among the governmental agents in which is vested the general power of expressing the government's will, consents to alterations or to the preparatory steps, the necessary function of duly conveying the supreme power may be performed. In this way a fundamental change may be brought about peacefully, and therefore not unlawfully. It is by requiring this consent of the existing government, as indispensable to the convocation of the people, that due order is preserved, and all necessary facts, including the qualifications of voters, are ascertained. Thus, too, there is secured a proper record of the solemn and important transaction.

Whether or not a convention be necessary does not depend upon a difference between a partial amendment and a complete reconstruction. In principle, and in matter of substance, there is no difference between these two things. Minute distinctions of this sort do not belong to the "high argument" as to how constitutions are made.

It follows that the constitutional provisions of 1846 on this subject and the legislative action of 1873 may be entirely disregarded, the amendments being perfectly regular without them. The act for submission passed in 1874, together with the subsequent popular approval, suffices to establish the amendments.

However imperfect in themselves, the most important of these amendments are steps in the right direction, and it is desirable that they should be recognized as valid. The sagacious who devised our system brought to their aid in the task a profound wisdom enlightened by extensive and laborious research; and owing to a vicissitude which had marked the career of all previous governments, many of their principles, then for the very first time attempted to be put into actual practice, were necessarily derived almost entirely from theory. That the executive, legislative and judicial departments should be kept separate was wisely adopted as a maxim. But their attempt to construct machinery for its development received no aid from precedent or experience, and it was not entirely successful. As well in the Federal Government as in that of each State, the legislative department was practically made supreme. Such a concentration of power led inevitably to the flagrant corruption now so extensively prevalent; and it is that precise evil which has stimulated efforts to suppress special legislation and confine the law-making power to the enactment of general laws. These efforts had their origin in a patriotic desire for good government and an enlightened perception of the remedy most appropriate to the end.

Nothing can be clearer than that the great mass of governmental acts now known as special legislation would belong to the class of executive resolutions in any truly scientific arrangement under the adopted and approved theory of the fathers. By confining such executive resolutions to their proper place the theory of three separate departments would be practically developed; and, perhaps, its supposed benefits might be realized. One department, the legislative, would make the laws, i. e., the general standing rules for the administration of public affairs; another department, the Executive, clothed with no law-making power, would, at its peril, conduct all applications of these standing rules to specific or particular cases; and a third department, the Judicial, having itself no power save to ascertain and declare the existing law, would judge how far the Executive had conformed to the general standing rules. This is the aim and spirit of the important amendments now before us. It is believed that Article VIII of the present Constitution, adopted in 1846, contains the first instance of an endeavor in this direction. It did not cover the whole ground, but it has been extremely useful. It has awakened attention to this much needed reform, and several of the sister States have acted on the New-York idea, greatly amplifying its application. By these amendments we have in our turn copied our imitators, and are carrying the good work forward in the path toward perfection. It will excite just regret if, from any cause, the clearly and strongly expressed will of the people shall be pronounced nugatory. I am thoroughly convinced that all the amendments are valid; but as this is only the opinion of an individual, there can be no objection to bringing the matter before the Court of last resort at the earliest opportunity. No great evil would be likely to result from such a step in any event.

Dec. 1, 1874.

GENERAL NOTES.

Omelette made of turtles' eggs are a staple delicacy in Florida.

Waverly, Ill., boasts a spry young lady who can stand and jump nine feet.

The manufacture of glove-leather from tripe is said to have been accomplished in France.

Deacon Rush of McLeod County, Minn., has been fined \$10 for fogging a grown-up daughter.

The State Temperance Alliance of California has determined upon the establishment of a cold-water political party.

There is a Mr. John Leprand in Todd County, Ky., who is an "Uncle John" indeed, for he has 15 nephews and nieces.

"And now," complains *The Omaha Bee*, "the barbarians of the East refer to our female population as 'Oma-bees.'"

On 65 cents a week a student in Iowa College is reported to have boarded himself, studying 20 hours a day. For how many days!

It is the opinion of *The Galveston News* that the trade between that city and the New West in tropical fruits, is destined to be very important.

A Torre Haute newspaper begs the policeman of Indianapolis, when they visit T. H. for "a big drink," to leave their uniforms behind them.

A PERILOUS FOSSIL HUNT.

PROF. MARSH'S LAST TRIP TO THE BAD LANDS.

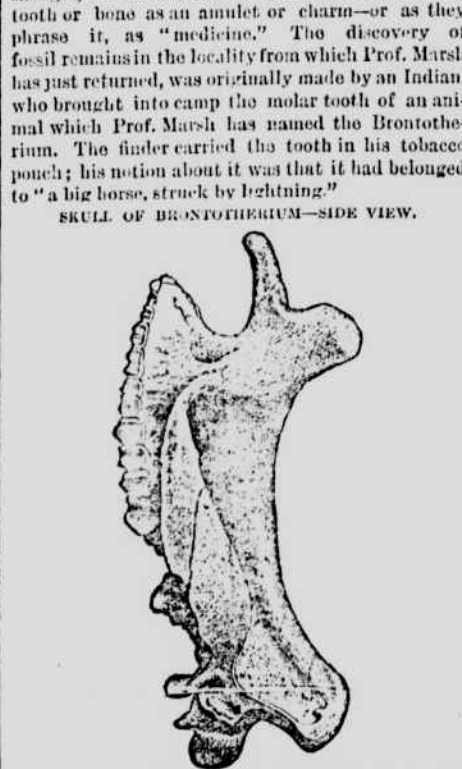
CIRCUMSTANCES WHICH LED TO THE EXPEDITION—DANGERS AND DIFFICULTIES ENCOUNTERED—THE PARTY THREATENED WITH INSTANT DESTRUCTION IF THEY MOVED FORWARD—A MOLLIFYING BANQUET—FRESH QUESTIONS—THE EXPEDITION STAGNATES AT A POINT ON THE INDIAN—A DOG-DINNER—DISCOVERIES IN FOSSIL REMAINS AND NEW FACTS IN GEOLOGY.

(FROM A STAFF CORRESPONDENT OF THE TRIBUNE.)
NEW-HAVEN, Dec. 19.—The early days of the present century, when Cuvier first identified in the system quarries of Paris the remains of mighty extinct quadrupeds, and the years shortly following when nations quarreled over similar discoveries, have often been called the golden age of paleontology. But ten times as many fossil bones have been recently brought to the museum of Yale College as Cuvier ever saw in his whole lifetime—the remains of animals as large, as varied, and as unlike the creatures of the present day as those which he so accurately described. They are reason for believing that the year 1874 marks the extreme point in this class of discoveries; certainly the collections will be hard to surpass in number and quantity.

THE BONE BUSINESS FLOURISHING.
During the summer months Prof. O. C. Marsh, whose annual journeys in search of vertebrate fossils at the West have become pretty well known to our readers, was deeply absorbed in planning and supervising the construction of the new museum of Yale College, of which a description was given in THE TRIBUNE of Aug. 12. The wing of this building, which is designed for immediate occupancy and use, covering an area of 115x100 feet, is already far advanced, workmen being engaged on the second story. The basement is of stone; the first story pressed brick with stone trimmings and arched windows. The whole structure will be fire-proof, and the work already done indicates that although very solid and substantial in appearance, the building will not be wanting in architectural beauty. But although unable himself to take part in explorations in the field, Prof. Marsh's life-work has not halted. The "bone-business," as his Western friends call it, did not slacken with the hard times. The conductors of Eastern-bound freight trains had many tons to look after, marked "handle with great care," and addressed to Yale College, and there was doubtless the usual amount of profanity expended over the heavy boxes in their long transits by stage and rail from the most inaccessible portions of our domain. Not less than 12 parties of men inured to the business were kept at work by Prof. Marsh, under his constant instructions, exploring various regions at the West for fossils and packing and sending forward the accumulations. It is unnecessary to state the large sum of money that the Professor is expending in these enterprises; as it is his own, the question cannot be pressed. But it is easy to see that intelligent and toilsome service such as he requires cannot be procured except at a heavy outlay. The fossils obtained he gives to the College; the arrivals during the season have sometimes exceeded a ton a week.

Patient study of the remains thus collected was leading Prof. Marsh to certain conclusions, in respect to the characteristics of extinct vertebrates, that cannot yet be stated. Notwithstanding the accumulated arrivals, the information to be gleaned proved unsatisfactory in determining vexed questions. Hasty conclusions from insufficient data are not to be thought of at New-Haven. It was better to postpone the announcement of new animals, new species, and new principles in zoology for a few months or even years, than to rush into print with a quadruped, like our Southern States, too hastily reconstructed. There are possibilities of mistake in these attempts that remind us of the nursery legend about the brewer's horse that wished to have his head where was his tail. To insure accuracy, the careful comparison of great numbers of specimens is necessary. Last October news came that had been discovered in the "Bad Lands" south of the Black Hills; the character and condition of these bones, as they lay imbedded in position, would throw additional light on the problem which he was then engaged in working out. It may here be mentioned also that there is no certainty that beds of fossils will remain permanently undisturbed, even where the region is only occupied by savages, for the Indians frequently carry a fossil tooth or bone as an amulet or charm—or as they phrase it, as "medicine." The discovery of fossil remains in the locality from which Prof. Marsh has just returned, was originally made by an Indian, who brought into camp the molar tooth of an animal which Prof. Marsh has named the *Brontotherium*. The finder carried the tooth in his tobacco pouch; his notion about it was that it had belonged to "a big horse, struck by lightning."

SKULL OF BRONTOTHERIUM—SIDE VIEW.



Gen. E. O. C. Ord, commanding the Department of the Platte, and Col. T. H. Stanton, to whom Prof. Marsh was first indebted for information respecting the newly found fossil bed, fully appreciated the importance of the discovery, and promised him every assistance in utilizing it. The weather was already cold, the season rapidly advancing, and the Indians feverishly sensitive about the approach of winter to the Black Hills. But great as were the perils, the attractions were greater; besides, the Professor had not yet had his annual vacation, and everybody conversant with college traditions knows that a vacation is something to be taken like old-school medicine, at all hazards. That he anticipated special hardship and danger from Indians may be inferred from the fact that he took with him no party from New-Haven, this expedition differing in that respect from all previous ones. He depended for assistance in the field on a number of frontiersmen who had been in his employ as collectors and guides in previous expeditions, and on whom he knew he could implicitly rely. Among these was Hank Clifford, who had been his chief guide in the Niobrara expedition of last year, and whose knowledge of the country and of the Indians had been fully tested. Other less famous but promising aspirants for honors upon the bone-fields were attached to the expedition.

Leaving the railroad at Cheyenne, Prof. Marsh reached Fort Laramie in the early part of November, and thence proceeded to the Red Cloud Agency, where he concentrated the men and materials of the expedition. The outfit on such occasions includes a great variety of articles: implements of war, of science, and of the kitchen, with abundant means for so packing the specimens obtained that they shall be not injured by the roughest kind of transportation. Gen. L. P. Bradley, Col. Stanton, Capt. Mix, and Lieut. Hay were of the party that went from Laramie to the Red Cloud Agency; the escort was M. Company of the 2d Cavalry, Capt. John Mix in command; Major A. B. Hurt joined the expedition at the Agency. It was ascertained that the locality of the fossils was not within any of the

reservations, and hence the Indians would have no evident right to obstruct the explorations. The XVIIth section of the treaty of 1868 with the Sioux would make their permission necessary, if strictly interpreted; but this treaty has become in part a dead letter, being, for instance, not enforced south of White River, while its provisions it extends to Platte River, which is further to the southward. Unfortunately the bone-field lay north of the White River. Prof. Marsh was anxious to have a willing assent from the Indians; a fight with them was no part of his programme. Shortly after the arrival of the party at the Agency, Red Cloud himself put in an appearance and was welcomed to dinner. He is still the tall, straight, intellectual-looking chief that he was when he visited our seaboard cities; temperate in his habits, and preserving his native dignity. It is certain, however, that he has lost no inconsiderable part of the influence over his tribe, especially among the young warriors, that he possessed when he was their leader in battle. As he cannot talk English, all conversation with him had to take place through the medium of an interpreter. The proposed expedition was only partially discussed at the dinner table, and Red Cloud's sentiments in respect to it were judged not to be unfriendly.

A BAD TIME FOR THE BONE HUNTERS.
But there were many circumstances making the time unpromising. The affair of the flagstaff was recent; it occurred before Prof. Marsh left Cheyenne, and occasioned there many misgivings as to his prospects; in fact there was a fair white snow alarm as to the possible fate of the Agency. The occurrence was described at the time in a telegram to THE TRIBUNE; it may here be briefly recapitulated. An attempt was made to raise a flag-staff and hoist the United States flag at the Red Cloud Agency, as is always done at military posts in the West. This aroused the animosity of Indians encamped in the vicinity; they cut down the flagstaff and made preparations to fire the "fort"—a wooden structure occupied by the Indian Agent. He sent to the post for aid. Lieut. Crawford was dispatched with about thirty men. The resolute bearing of this small force held the Indians for a while in check, and by energetic persuasion on the part of Red Cloud, Sitting Bull, and other chiefs, they were induced to relinquish their design. Great credit is due to Lieut. Crawford for his courageous attitude on this occasion, as the odds against him in case of battle were fearful.

The general danger was greatly increased at this time by the presence in the neighborhood of an extraordinary number of Indians, gathered to obtain their annuities. Their numbers did not probably fall short of 15,000. They were encamped within a radius of ten miles around the Agency. There were about 9,000 of Red Cloud's band, the Ojibwas, the Cut-Off band under Little Wound, the Arrapahoes under their chief Friday, of whom there are romantic stories told which there is not space for here. Besides these there were about 3,000 Northern Indians, of the wilder tribes, Minneconjous, Unapacs, and Sansars, who boast that they have never eaten white man's bread; who fought Gen. Custer in the Yellowstone expedition. These Indians refused to be registered, having a superstition about being counted. The orders from Washington forbade the issue of annuities to any except those who were registered. Cheyennes were there, sulkily because they had been ordered forth south. The Arrapahoes were fresh from their fight and losses in the battle on Powder River with Lieut. Bates, Outlaws, rangers, and "bad Indians," swelled the numbers that surrounded the Agency, and made the neighborhood unsafe, not to say dangerous. An incident will illustrate the real temper of the class that claim to be good Indians. Within gunshot of the Agency a teamster, whom Prof. Marsh had noticed a few minutes before busily engaged in cooking his supper, was indiscreet enough to leave his rifle a few steps away. A young Indian having passed Prof. Marsh on horseback, and seeing him well armed, gave him a respectful salutation. Not so with the teamster; the weakness of his position was apprehended by the brave at the glance. In less time than it takes to tell it, the Indian rode between the teamster and his rifle, and snatching up the latter, made off, pointing a pistol backward in defiance. The despoiled teamster ran up to the Agency, and was very free in the use of "cuss-words"; but it was the general opinion that he might be considered fortunate in having, while he lost his gun, preserved his hair.

THE FIRST COUNCIL—GOLD AND BONES.

In short the whole vicinity was alive with Indians, their families, and their ponies; they had with them their entire possessions, and their lodges diversified the landscape in every direction. It was impossible to move even a few paces without encountering Indians, Indians everywhere. The Agent at the post recommended that a guard should be selected from these warriors to accompany the expedition, and very soon assembled a council of leading chiefs to discuss the matter. As soon as they were brought together, it became evident that they mistrusted the intentions of the bone-hunters, as stated by the Agent. Instead of waiting some moments, as they usually do after the object of a council has been stated, White Tail, one of the principal chiefs, sprang at once to his feet and harangued the audience, recounting previous grievances and declared that the proposed bone-seeking was merely a ruse to begin digging for gold and invading the Black Hills region. His speech evidently conveyed the sentiments of the other chiefs; they listened intently, giving vent to applause and sympathy with guttural ejaculations of "How! How!" But a speech from Prof. Marsh through the medium of an interpreter, promising that their just complaints should be heard at Washington, stating specifically the objects of the expedition, and holding out the prospect of pay for Indian services in bone-hunting, turned the scale at once. Consent was obtained for the expedition to proceed, but coupled with an agreement to take a selected guard of young warriors. The nominal object of this guard was to be a protection against Northern Indians who were encamped across the White River; the real intent was to keep watch on the proceedings of the bone-hunters. Sitting Bull, one of the most influential chieftains, was to select the guard, and himself to go at their head. Prof. Marsh was to let Sitting Bull know when he was ready to move forward.

MAP OF THE REGION OF FOSSIL DISCOVERIES.



The next day three or four inches of snow fell; this of itself inevitably delayed the expedition. Meanwhile the annuities were issued to the Indians, and this quite changed the aspect of affairs. Having got their annuities, the Indians were no longer on their good behavior; they could raid around for another year. There is at best always a great deal of dissatisfaction among them after the annuities are issued, but even those who had got all they hoped for exhibited a sullenness in marked contrast with their previous demeanor. In frontier phrase, "the Indians didn't care a cuss for Uncle Sam." The bone-hunting expedition was discussed in every

lodge. They all arrived at one conclusion, that the pretense of seeking fossils was much "too thin." The chief of the bone-hunters was certainly in search of gold.

A CASE WHERE DISCRETION WAS THE BETTER PART.
Quite unaware of the change of sentiment, the expedition went on with its preparations, and on the second morning after the issue of annuities, broke camp and proceeded to the Agency, expecting to get the Indian guard. The whole party, including the soldiers, were dressed up ready for the start. To reach the Agency they had to pass between several "villages" composed of Indian lodges. The sight of the soldiers and the wagons excited the Indians. They gathered in great numbers about the Agency. They were armed quite as well as our soldiers, with breech-loading rifles and revolvers of the most recent patterns. Sitting Bull declared that the young men promised a guard refused to go, being afraid of the Northern Indians. Red Cloud, when Prof. Marsh appealed to him, said that his young men believed the object of the search was gold, not bones, and the Indians grew apprehensive of his words. Pretty Crow, a chief of note, suddenly precipitated a crisis by shouting, "The white men are going into our country to find gold; we must stop them at once!" A cry of "gold" was given. The women and children were snatched up hastily and hidden out of harm's way. Guns were pointed at the party on every side, and a line of mounted Indians formed on their front and rear. In all directions runners were seen galloping off to the villages and calling together the warriors. The Indians outnumbered the expedition at least thirty to one. A single shot, or the order "Forward!" would have brought down their fire.

To push on under such circumstances would have been madness. The Agent and the friendly chiefs pointed out to Prof. Marsh that the presence of the soldiers aggravated the excitement of the Indians. There was but one thing to do with safety; that was to withdraw. The entire expedition turned about and retreated to Camp Robinson, a distance of one-and-a-half miles. It is not worth while here to recount the jests which this movement elicited from the Indians; they showered insults on the retreating party; the language of signs is never more efficient than for such a purpose, and it was freely used. As were these insults, they were preferable to bullets. The rest of the day was spent in consultations. The advice of Mr. J. W. Darr and his assistance proved of great service to the party. On the following day beef was issued by the Agent to the hands entitled to it. Meanwhile, as a result of many consultations, two conclusions were arrived at. 1. That something must be done to win the consent of the Indians. 2. That a feast given by Prof. Marsh and a few presents to leading chiefs were the most promising means of attaining consent. The Professor was becoming very much disgusted with councils and talks, but decided to have another one.

On the day after the beef issue the feast was given. The order of precedence is as well established on these occasions as at a European court. Only the more eminent chiefs were admitted; the following were among them: Red Cloud, Red Dog, Old Man Afraid of His Horses, Spider (a brother of Red Cloud), Sword (son-in-law of Red Cloud), Sitting Bull, Pawnee Killer, Conquering Bear, Friday, American Horse, Torn Belly, Red Leaf, Rocky Bear, Little Wound, Three Bears, White Tail, Young Man Afraid of His Horses, Stabber, Hand, Pretty Crow, and some 30 others of less note. The feast was given in a tent 30 feet in height, and every detail of Indian etiquette was strictly observed. At its close, after Prof. Marsh had again stated the object and character of the expedition, a reluctant consent was again accorded, with the warning that the Minneconjous were likely to kill the Professor if he crossed the White River. A band of scouts was promised under the leadership of Sword, whose influence is little less than that of his father-in-law, Red Cloud. It was again left with Prof. Marsh to name the hour for starting, all else being apparently provided for.

BEATING INDIANS AT THEIR OWN GAME.
Feeling that a council coupled with so much hesitation might prove unavailing, the Professor resolved to test it, and sent word quickly, late in the night after the feast, to his interpreters and guides, to be ready the next morning. The dread of the Minneconjous and Unapacs overcame the blandishments of the feast. Indian scouts, guides, and interpreters all alike refused to go. Disappointed and not a little exasperated by these repeated delays, Prof. Marsh resolved upon the most extraordinary move of this expedition. He decided to give the Indians the slip. That night, shortly after midnight, he crossed the river, and after a short march, he reached the Indian villages as silently as possible, the expedition sought the White River at the only spot where, for at least 15 miles, it is fordable. The dogs barked furiously as the party descended between the lodges, but fortunately their owners slept. If the expedition had been attacked at this time, their case would have been hopeless. It was a bitter night, and after crossing the river, as they descended the highlands, the cold was so intense that those on horseback had to dismount and walk to keep from freezing.

A COLD SPELL IN THE BAD LANDS.

The stolen march was soon discovered. By daylight scouts could be seen riding from village to village giving the alarm. Before the morning dawn was reached, Indian sentinels on horseback posted on the high battens, were watching the party. Both on account of the cold and the danger, the march was made with rapidity. On arriving at the locality, a position for the camp was chosen by Lieut. W. L. Carpenter, of great natural strength, flanked by ravines. But the field of research included a circuit of ten miles, mainly in a deep gorge. From the highest battens in the vicinity, Harney's Peak was visible. The party went to work immediately on their arrival on the ground; in fact the weather was so intensely cold that work became a necessity. They could not sit on the ground to dig; moving about was necessary to keep from freezing. As fast as fossils were secured, they were heaped together, and piles of stones were placed to mark the localities of the bones. In the event of a snow-storm, for several days this bitter cold continued. The frugal meal rarely included water, ice-water ceasing to be a luxury. When a tumbler was filled, its contents rapidly froze solid, and before the tumbler in the tent could be set, it was advisable to punch with a fork the ice that was forming in the glasses, and drink what remained fluid as quickly as possible. The bearded members of the party, including the Professor, were fastened with icicles, like the Vikings of old, and had to break holes under their mustaches to put food in. During this exceptionally cold weather, there were four officers and many soldiers severely frost-bitten; but none of the bone-hunting party suffered injury, probably because they were so actively employed.

ALARMS IN CAMP.
At length the cold moderated and there came a snow-storm. The places marked by piles of rock were then the scene of renewed labors. Brooms made of bushes and grass were employed at these points to brush away the snow. Meanwhile, in spite of the cold, the Indians had kept their mounted sentinels on the neighboring hills, watching the operations of the party. One night some Indians attempted to surprise the camp; its guard, instead of shooting the approaching savages, awakened the members of the expedition. The Indians perceiving that the camp was alarmed, withdrew. This was far better than shooting would have been, since if an Indian had been shot the act would have drawn down vengeance on the party. Occasionally in the daytime a few Sioux dropped in with profers of friendship, probably to obtain a nearer look at the work of the expedition. When success was well nigh assured, and the labor of collecting was nearly completed, there were fears that a snow-storm which was threatened would check the packing. A more serious cause for alarm was found in the representations of a party